

Indian Brotherhood of the Northwest Territories

Metis Association of the Northwest Territories

"Aboriginal Title: A Legal Perspective"

Summary of Evidence of

DOUGLAS E. SANDERS

before the

MACKENZIE VALLEY PIPELINE INQUIRY

YELLOWKNIFE, N.W.T.

CANADIAN ARCTIC
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OUTLINE OF TESTIMONY

The purpose of this testimony is to consider the question of the relationship of non-traditional land use projects to aboriginal title claims. Initially, I will examine the question of the legal roots of the concept of aboriginal title in English colonial law and practice. That will be done in order to ascertain whether the legal traditions give any particular guidance as to how aboriginal title claims can or should be resolved. In this larger context, I will examine the historical Canadian experience and the present situation in the Northwest Territories.

I. ENGLISH LAW ON THE ACQUISITION OF NEW TERRITORIES

Through colonial practice and a series of judicial decisions, a general legal framework for the acquisition of new territories was developed by English law. The practical question normally involved in the judicial decisions was the degree to which existing legal systems in the newly acquired territories survived the acquisition of sovereignty by England or, the converse issue, the degree to which English law now applied in the area. The cases were not concerned with international law (that is the relations between the colonial nations of Europe) but with

the internal law in force in particular colonial areas. The general legal framework received its classic statement in Blackstone's Commentaries on the Laws of England in 1765:

Plantations or colonies, in distinct countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother-country; or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations. But there is a difference between these two species of colonies, with respect to the laws by which they are bound. For it hath been held, that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law, as is applicable to their own situation and the condition of an infant colony... But conquered or ceded countries, that have already laws of their own, the King may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such are against the law of God as in the case of an infidel country.

The cases which deal with these general questions are:

Calvins Case, (1608) 77 E.R. 387.

Blankard v Galdy, (1693) 91 E.R. 356.

Anonymous, (1722) 24 E.R. 646.

Omichund v Barker, (1744) 125 E.R. 1310.

Penn v Lord Baltimore, (1750) 27 E.R. 1132.

Campbell v Hall, (1774) 98 E.R. 848.

Freeman v Fairlie, (1828) 18 E.R. 117.

Mayor of Lyons v East Indian Company, (1837) 12 E.R. 782.

Advocate General of Bengal v Ranee Suromoye Dossee, (1863) 19 E.R. 786.

Cooper v Stuart, (1889) 14 A.C. 286.

West Rand Central Gold Mining Company v The King, (1905)
2 K.B. 391.

In Re Southern Rhodesia, (1919) A.C. 211.

Amodu Tijani v Secretary, Southern Nigeria, (1921) 2 A.C. 399.

Oyekan v Adele, (1957) 2 All. E. R. 785.

Milirrpum v Nabalco, (1971) 17 F. L. R. 141 (Australia).

Non-judicial materials on these general questions are:

Blackstone, Commentaries on the Laws of England, 1765.

Chalmers, Political Annals, 1780.

Stokes, A view of the Constitution of the British Colonies
in North America and the West Indies, London, 1783.

Chalmers, Opinions of Eminent Lawyers, 1814.

Clark, A summary of Colonial Law, London, Sweet, Maxwell
and Stevens, 1834.

Report of the Select Committee on Aborigines (British
Settlements) Command Paper, 1837.

Herman Merivale, Lectures on Colonization and Colonies,
London, Longmans, Green, Longman and Roberts, 1861.

Charles James Tarring, Law Relating to the Colonies, London,
Stevens and Haynes, 1882.

Chancellor Kent, Commentaries on American Law, 1889, Vol. 3,
p. 411.

Sir George Carnewall Lewis, An Essay on the Government of
Dependencies, 1841, Oxford at the Clarendon Press.

Sir Henry Jenkyns, British Rule and Jurisdiction Behond the
Seas, Oxford at the Clarendon Press, 1902.

Stephens, Commentaries on the Laws of England, Fifteenth
Edition, Vol. 1, London, Butterworth and Co., 1908.

Alpheus Henry Snow, The Question of Aborigines in the law
and practice of Nations, U.S. Government Printing
Office, Washington, 1919 (reprinted 1972).

M. F. Lindley, The Acquisition and Government of Backward
Territory in International Law, Longmans Green and
Co., 1926 (reprinted 1969).

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<https://archive.org/details/31761120643838>

Komar, The Royal Proclamation of 1763, Indian Claims Commission, Ottawa, 1971, unpublished.

Brian Slattery, The Land Rights of Indigenous Canadian Peoples: International Aspects, 1974, Faculty of Law, University of Dar Es Salaam, unpublished.

While the acquisition of new territories has roots in international activity, the question of the relationship between the colonial sovereign and the newly acquired territory and its peoples has, traditionally, been seen as a domestic question:

Island of Palmas case, (1828) 2 U.N. Reports of International Arbitral Awards, 629.

Cayuga Indians Claim, (1926) 6 U. N. Reports of International Arbitral Awards, 173.

Rex v Syliboy, (1929) 1 D.L.R. 307.

L. C. Green, Canada's Indians: Federal Policy, International and Constitutional Law, (1970) 4 Ottawa Law Review, 101.

English law defined North America as having been acquired (vis-a-vis the native population) by peaceful settlement, that is by "settlement" or "occupation" as opposed to "conquest" or "cession". The term "cession" in this context refers to a cession of sovereignty (such as in the Treaty of Waitangi in New Zealand in 1840 or in the cession of Fiji) not to documents such as the Canadian Indian treaties which are referred to as land cession treaties. Acquisition of new territories by settlement and occupation presumed that the lands were uninhabited. In the words of Blackstone, lands acquired in this manner must be "desert and uncultivated". Chalmers described North America as "waste because it was uncultivated" and a "desert territory". In Freeman v Fairlie, it was stated that lands could be taken by settlement or occupation if they lacked "any existing civil institutions and laws". Sir. George Cornewall Lewis described North America as an area in which the aboriginal inhabitants

had been "expelled or exterminated". The 1858 imperial legislation which established the Colony of British Columbia described the mainland of what is now British Columbia as "wild and unoccupied" (though on two occasions earlier in the 19th century, imperial legislation had described it as being part of the "Indian territories"). In 1889 the Judicial Committee of the Privy Council described New South Wales as having been "practically unoccupied, without settled inhabitants or settled law." (Cooper v Stuart). Jenkyns suggested that settlement and occupation was only possible where there was no "civilized society with civil institutions or laws" and where there was nothing "which could be called a lex loci." In 1971, in *Milirrpum v Nabalco*, Mr. Justice Blackburn ruled that Australia had been an unoccupied territory at the time of its acquisition by England. He was careful to point out that the conclusion was one of law not of fact. Factually, he conceded, it was untrue.

Conclusion:

English law on the acquisition of new territories provided that England could acquire an uninhabited area and that English law, to the degree applicable to the circumstances of the area, would apply. The text writers extended this principle to areas with scattered populations and no civil institutions. England did not claim to acquire the territories now forming Canada from the native tribes by conquest or cession. If Canada had been acquired from the native tribes by conquest or cession, existing native law would have continued in operation until altered by the colonial sovereign. This would, of course, have meant that Indian aboriginal rights would have been fully recognized. English writers asserted that Canada had been acquired by settlement or occupation. This

involved two factually erroneous assumptions: (a) that Canada was unoccupied, and (b) that any occupants lacked civil institutions or systems of law. Current understandings of Indian customary law and social organization make such assertions indefensible. The testimony of Dr. June Helm and Professor Beryl Gillespie in In Re Paulette are relevant on that question in relation to the Indian tribes of the Northwest Territories.

II. A COMMON LAW OF NATIVE RIGHTS BASED ON IMPERIAL PRACTICE.

England developed certain distinct practices in response to the situation in North America. These practices did not relate directly or indirectly to the rules concerning the acquisition of new territories. They dealt with indigenous property rights within a jurisdiction generally treated as having been acquired by occupation and settlement.

The development of what I have termed "a common law of native rights" was slow. Jurisdiction over native questions was originally completely decentralized. It was centralized by the imperial government in the years leading up to the Royal Proclamation of 1763. The major events were the Albany Congress of 1754, the administrative centralization of Indian Affairs and the military in 1755, the creation of the two Indian superintendencies in 1756, the instructions to colonial governors in 1761, the Belcher Proclamation of 1762 and the Royal Proclamation of 1763. The centralization meant, for the first time, a uniform English approach to Indian questions, one which recognized aboriginal land rights.

Komar, The Royal Proclamation of 1763, Indian Claims Commission, Ottawa, 1971.

Dickerson, American Colonial Government 1696-1765, New York, Russell and Russell, 1962.

Alvord, The Genesis of the Proclamation of 1763, Michigan Pioneer and Historical Society, Historical Collections, V. 36, 1908, 20.

Sosin, Whitehall and the Wilderness: The Middle West in British Colonial Policy, 1760-1775, Lincoln, University of Nebraska Press, 1961.

In the manner of the early common law, particular patterns of practice were established in response to the realities of the situation. Practice became supplimented by formal political and legal decisions. Judicial decisions further supplimented the general legal framework. The origins of the final doctrines cannot be attributed exclusively to British Law on the acquisition of new territories, to specific documents such as the Royal Proclamation of 1763 or to doctrines such as prescription or adverse possession. In the manner of the common law, the evolved principles were rooted in experience and formed part of the general body of the law. They are prospective, for as general principles of law, they apply to subsequent events and areas subsequently brought within the same legal and political regime. The existing case law is limited and, as in any imperfectly developed area of the law, vague and ambiguous on certain points. On no occasion have the courts gone against prevailing historical practices in any national jurisdiction.

Counsels Opinion, 1675, in Vol. XIII, Documents Relating to The Colonial History of the State of New York, p. 486, reprinted in Chancellor Boyd's Judgment in the St. Catherine's Milling Case, (1885) 10 O.R. 196 at 207.

Articles of Capitulation of Montreal, 1760.

- Royal Proclamation of 1763.
- The Northwest Ordinance, 1787 (United States).
- Chalmers, Opinions of Eminent Lawyers, 1814.
- Johnson v McIntosh, (1823) 8 Wheat. 543, 21 U.S. 240.
- Cherokee Nation v Georgia, (1831) 30 U.S. 1.
- Worcester v Georgia, (1832) 31 U.S. 515.
- St. Catherines Milling v The Queen, (1889) 14 A.C. 46.
- Ol le Njogo v Attorney General of the East African Protectorate,
(1914) 5 East Africa Protectorate Reports, 70.
- In Re Southern Rhodesia, (1919) A.C. 211.
- Amodu Tijani v Secretary, Southern Rhodesia, (1921) 2 A.C. 399.
- Milirrpum v Nabalco, (1971) 17 F.L.R. 141.
- Calder v Attorney General of British Columbia, (1973) S.C.R. 313.
- In Re Paulette, (1973) 6 W.W.R. 97 (N.W.T. S.C.)
- Kanatawat v James Bay Corporation, November, 1973, unreported.
- Lysyk, The Indian Title Question in Canada: An Appraisal
in the Light of Calder, (1973) 51 Canadian Bar Review, 450.
- Sanders, Canadian Courts and the Concept of Indian Title,
Proceedings of the First Congress, Canadian Ethnology
Society, Canadian Ethnology Service Paper no. 17,
National Museum of Man, Mercury Series, Ottawa, 1974,
p. 4.
- Upendra Baxi, The Lost Dreamtime: Now Forever Lost - a Critique
of the Gove Land Rights Decision, Australasian Universities
Law Schools Association, Hobart, Tasmania, 1972 (available
from the Indian Claims Commission).
- John Hookey, Milirrpum and the Maoris, Australasian Universities
Law Schools Association, Hobart, Tasmania, 1972 (available
from the Indian Claims Commission).
- Aboriginal Land Rights Commission, Second Report, April, 1974,
Australian Government Publishing Service, Canberra.
- Blackshield, The Aboriginal Land Rights Case, four articles,
c1971, published reference unavailable.

III. FORMS OF RESOLUTION OF ABORIGINAL TITLE CLAIMS

The basic principles of English colonial law which developed in North America in the late 18th century can be summed up in two statements. Native ownership of land was to be recognized. The process of creating non-native interests in native land should be subject to certain protective controls. These principles were applied subsequently in various parts of the world. Their application took two basic forms: (1) land cession treaties (or other large scale terminations of native interests) and the creation of reserves, native allotments or other forms of land ownership or land use rights, and (2) systems of recognition and conversion of native title. We are familiar with the first basic form, for it is seen in North America as the norm. We are unfamiliar with the second basic form, for it has occurred elsewhere - notably in New Zealand, Oceania and Africa. Although New Zealand has often been cited as a model which Canada might wish to follow, Canadian literature on native questions has never included a description of the land rights system in New Zealand.

(1) Land cession treaties:

The Royal Proclamation simply provided that Indian lands should be purchased in a public meeting to be held for that purpose by the Governor or Commander-in-Chief of the colony within which the lands were situated. It dealt with the method of sale, but not the timing, area, the Indian land holding units or with the nature or extent of rights that Indians might retain after any treaty. Following the Proclamation there were a series of treaties and surrenders in what is

now southern Ontario. Many of these dealt with small populations of Indians and relatively limited areas of land. The pattern there - and the pattern in the early 1850's in the Colony of Vancouver's Island - was to recognize local Indian land holding units and to negotiate with them for their holdings. A significant fact in the history of Indian treaties in Canada is a dramatic alteration of geographical scale. After 1870, the federal government began its treaty making process in what had been Rupert's Land and the Northwestern Territory. The first treaties were on a dramatically larger scale than those that had blanketed southern Ontario in the years between 1763 and 1867. But the geographical scale of Treaties 1, 2 and 3 (1871 and 1873) were immediately dwarfed by the next immediate series: Treaties 5 to 7 (1875-1877). There is a twenty-two year gap between Treaty 7 in 1877 and Treaty 8 in 1899. It seems significant that three of the final Treaties - 8, 9 and 11 - are clearly the largest in Canada and vastly larger than any treaties negotiated in the United States or Africa.

Indian Treaties and Surrenders, 3 Volumes, Queen's Printer,
Ottawa, 1891 and 1912 (reprinted, Coles Canadiana Collection).

Morris, The Treaties of Canada with the Indians of Manitoba
and the North-West Territories, Toronto, 1880
(reprinted, Coles Canadiana Collection).

Papers Connected with the Indian Land Question, 1850-75,
British Columbia, Lands and Works Department, Victoria, 1875.

Wilson Duff, The Fort Victoria Treaties, 1969, B.C. Studies,
No. 3, p. 3.

Clearly the Treaty process changed dramatically from that followed in southern Ontario and on Vancouver Island. It is relevant to ask why this shift took place. Did it represent the logic of colonial legal theory? Did it reflect different patterns of Indian land ownership

in the areas in which the treaty process was being extended? Did it reflect other factors? It is suggested that it reflected the increasingly confident and centralized legal and governmental structure created in Canada by the colonial process and the increased political weakness of the Indian tribes. The prairie treaties were negotiated in periods of near desperation for the prairie tribes. With the traditional economic order obviously disintegrating from forces beyond the control of the tribes, the Indian leadership had little choice but to accept the offers of the government to treat the Indians as "children" subject to the benevolence of the "great white mother". The Indian treaties of the "fertile belt" can only be understood in the context of the crisis which the prairie tribes were experiencing in the period. Their political bargaining position had largely been destroyed. In the negotiations they asked, among other things, for relief in times of famine, for that was what was facing them.

(2) Systems of recognition and conversion of native title:

Systems of recognition and conversion can be described in the following way. The legal system recognizes native land holding rights as established by native customary law. The process of creating non-native interests in native land requires a formalization of the native title and a conversion of the native title (which by customary law would not be transferable outside a localized native group) into a transferable European style title. Some institution is necessary to ascertain the native owners and to create the European style title. The institution, typically, will also examine the proposed transaction which will create the non-native interests in the land to determine whether it is fair and

reasonable. Since the process of determining native owners of particular lands involves understanding customary law, the institution created to handle the process must include native people or, at least, have native "assessors" attached to the institution in some manner.

Recognition and conversion systems are not limited to territories acquired by conquest or cession, as is shown in the case of Papua. Such systems are described in the following materials:

New Zealand

Norman Smith, Maori Land Law, A.H. & A.W. Reed, Wellington, New Zealand, 1960.

J. K. Hunn, Report on Department of Maori Affairs, Government Printer, Wellington, 1960.

Ivor Pritchard, Hemi Tono Waetford, Report of the Committee of Inquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court, Government Printer, Wellington, 1965.

Alan Ward, A Show of Justice, Australian National University Press, Canberra, 1971.

R. H. Tristram, Observations on the Historical Origins and Contemporary Significance of Legislation Relating to Maori Land, in McKean (ed), Essays on Race Relations and the Law in New Zealand, Sweet and Maxwell (N.Z.), Wellington, 1971.

James Gosselin, J. Jameson Bond, The Development of Maori-European Relations: A Socio-Political Consideration, A Report prepared for the Advisory Commission on the Development of Government in the Northwest Territories, 1966.

M. P. K. Sorrenson, The Politics of Land, in Pocock (ed), The Maori and New Zealand Politics, Blackwood and Janet Paul Ltd., Auckland and Hamilton, 1965.

John Holmes, The Maori Land Tenure, Honours LL.B. Dissertation, University of Auckland, 1971, unpublished.

Government White Paper on Proposed Amendments to the Maori Affairs Act 1953, The Maori Affairs Amendment Act 1967, and other related Acts, Government of New Zealand, 1973.

Papua New Guinea

Ian Hogbin, Peter Lawrence, Studies in New Guinea Land, Sydney University Press, 1967.

Peter G. Sack, Land Between Two Laws, Australian National University Press, 1973.

W. A. Lalor, Land Law and Registration, in Brown (ed) The Fashion of Law in New Guinea, Butterworths (Australia) 1969.

Land Tenure and Economic Development: Problems and Policies in Papua-New Guinea and Kenya, New Guinea Research Bulletin, No. 40, New Guinea Research Unit, Australian National University, Canberra, 1971.

Oceania

Ron Crocombe, Land Tenure in the Pacific, Oxford University Press, Melbourne, 1971.

Ron Crocombe, Land Tenure in the Cook Islands, Oxford University Press, Melbourne, published in association with the Australian National University, 1964.

Peter France, The Charter of the Land, Custom and Colonization in Fiji, Oxford University Press, Melbourne, 1969.

Africa

R. W. James, Land Tenure and Policy in Tanzania, University of Toronto Press, 1971.

Note: There are a number of specific legal studies of African land law which focus on particular tribal groups. They are essentially repetitive of (a) particular customary land law systems, and (b) the local recognition and conversion system.

General

C. K. Meek, Land Law and Custom in the Colonies, Frank Cass and Company, London, 1946.

Systems of recognition and conversion are well established in a great number of countries which derive their modern legal systems from England. Certain problems have occurred in these systems (a) because of undue pressure on native groups to sell land, and (b) because of distortions in the customary system brought about by possibly premature European style formalization of titles. Nevertheless, the systems are well established politically and legally and are continuing parts of the legal systems in the particular countries.

(3) Allotments of land:

A resolution of aboriginal title claims has, in certain areas, involved allotments of land to individual native people or to native families. The two major examples appear to be allotments of reservation land in the United States under the Dawes Allotment Act of 1887 (The General Allotment Act, 24 Stat. 388) and the Half-Breed land grants in Canada under the Manitoba Act and the Dominion Lands Act. On allotments, the following literature is relevant.

John Taylor, Historical introduction to Metis Claims in Canada, Indian Claims Commission, Ottawa, 1973, 1975.

H. Douglas Kemp, Land Grants under the Manitoba Act, Historical and Scientific Society of Manitoba, Series III, 1954, p. 3.

Marcel Giraud, The Western Metis after the Insurrection, 1956, Saskatchewan History, Vol. 9, No. 1, p. 1.

Stanley, The Birth of Western Canada, University of Toronto Press, 1960.

Ethel Williams, The Indian Heirship Land Problems, in Johnson (ed) Studies in American Indian Law, Faculty of Law, University of Washington, Seattle, June, 1970 (mimeo).

(4) Other land holding systems:

Resolution of aboriginal title claims may involve the establishment of reserves or the establishment of other systems for group land holding. As is now well known, the Alaska Native Claims Settlement Act granted land and money to a series of regional and local corporations. They were incorporated under the standard state law relating to corporations. There are other examples of corporations or trusts established to hold land for a native group.

Aronson, Aboriginal Land Rights: The View from Australia, 1975 (unpublished)

Sanders, Compensation Schemes for Native Land Claims, Waigani Seminar, University of Papua New Guinea, 1973, reprinted in Sanders, Cases and Materials on Native Law, University of Saskatchewan Summer Program for Native Law Students, 1973, p 61.

Norman Smith, Maori Land Corporations, A.H. & A.W. Reed, Wellington, New Zealand, 1962.

Report of the Commission of Inquiry appointed to inquire into and report upon the working of the law relating to the taxation of Maori authorities, Government Printer, Wellington, 1952.

Report of the Royal Commission on the condition of the Halfbreed Population of the province of Alberta, 1936, Sessional Paper No. 72. (see also the Metis Betterment Act of the Province of Alberta).

C. Roderick Wilson, R. Bruce Morrison, Grande Cache: Another Land Claims Model, in Freedman and Barkow (eds), Proceedings of the Second Congress, Canadian Ethnology Society, Canadian Ethnology Service Paper No. 28, National Museum of Man, Mercury Series, Ottawa, 1975.

Conclusion

Resolution of aboriginal title claims in English law can result in:

(a) a system of recognition and conversion of native title,

- (b) a system of surrenders and reserves,
- (c) allotments of land to individuals or families,
- (d) corporate land holding by a corporation, trust or other body,
- (e) certain rights to use lands (such as hunting, fishing, trapping and gathering).

There is no reason to exclude the application of any of these variant systems to the situation in the Northwest Territories of Canada.

IV. THE PRESENT SITUATION IN THE NORTHWEST TERRITORIES.

(A) The evolution of Canadian Indian policy, 1763 to the present.

Indian policy has been an important part of the constitutional history of Canada. There was the centralization of Indian policy in the 18th Century (referred to earlier), the transfer of jurisdiction over native matters to the Province of Canada in 1860 and the decision in 1867 to assign legislative responsibility over "Indians, and Lands Reserved for the Indians" to the federal government. The decision in 1867 in favour of federal jurisdiction appears to be rooted in a policy commitment to protect native groups and the perception that the centralization of authority was more likely to advance that goal. Because of this centralist decision, the question of native rights has been a significant question in the constitutional evolution of the country since 1867.

Sanders, The Foundations of Canadian Indian Law after 1867, University of Windsor, October 18, 1972, unpublished, available at the Indian Claims Commission, Ottawa.

Sanders, Group Rights, the Constitutional Position of the Canadian Indian, paper for the Study Group on the Canadian Constitution, Canadian Association of Law Teachers, 1972, available at the Indian Claims Commission, Ottawa.

The Manitoba Act, 1870.

Order of Her Majesty in Council, admitting Rupert's Land
and the North-Western Territory into the Union, 1870.

Terms of Union of British Columbia, 1871.

Quebec Boundaries Extension Act, 1912.

Ontario Boundaries Extension Act, 1912.

British North America Act, 1930 (The Natural Resources Transfer
Agreements).

Carrouthers commission on the development of government in
the Northwest Territories.

A Paper on the Philosophy of the Department of Local Government,
prepared for the Legislative Council of the Northwest
Territories, January 10, 1975.

Judge William Morrow, Native Land Claims and the Proposed
Pipeline, talk to the Natural Resources Institute, Winnipeg,
February 2, 1976, reprinted in News of the North, February
11, 1976 under the headline: "North in Ferment".

Canadian constitutional history would indicate that decisions relating
to a resolution of native land claims and decisions relating to
the constitutional evolution of the Northwest Territories cannot be
separated. The recent land claim of the Inuit confirms this analysis.

(B) The relationship of non-native land use and a resolution of aboriginal
title claims.

Earlier it was suggested that there are five differing kinds
of property regimes or property rights which could emerge from a resolution
of aboriginal title claims: (a) a system of recognition and conversion, (b)
reserves, (c) allotments, (d) corporations or trusts holding land, (e)
usufructuary rights to hunt, fish, trap, gather or harvest the land. It

seems clear that permitting non-native land use without a resolution of aboriginal title claims necessarily compromises the nature of the claims or assumes a particular type of resolution of the claims. To see the question simply in terms of expropriating government crown land or expropriating Indian land fails to appreciate the alternative possibilities of native ownership that could follow a resolution of aboriginal title claims. To pick two alternatives, the expropriation might be of individual private land holdings under an allotment system or the expropriation of property rights held by a corporation for all Indian people in the Mackenzie District. The variants involved are not simply those of ownership and compensation but also of control.

WITNESS RESUME

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Douglas E. Sanders

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Professional experience:

1963-69 - private practice, Vancouver, B.C.

1969-72 - Assistant Professor, Faculty of Law,
University of Windsor

Summer 1972 - research on indigenous policy,
Australia, Ne Zealand, Papua New Guinea
and Fiji

1972-74 - Director, Native Law Centre, Carleton
University, Ottawa

Summers 1973, 1974 - Lecturer, pre-law programme for
Native students, College of Law, University
of Saskatchewan

August, 1974 - May, 1975 - Legal Counsel and Research
Co-ordinator, Union of British Columbia
Indian Chiefs

June-July, 1975 - Volunteer advisor, National Indian
Association of Panama, under CUSO auspices

Litigation relating to Indians:

1. Expert witness in Kanatawat v. James Bay Corp'n.

2. Counsel in InRe Paulette (Supreme Court N.W.T.)

3. Counsel for National Indian Brotherhood in
Lavell v. A.-G. Canada and Canard v. A.-G. Manitoba
(Supreme Court of Canada)

4. Counsel in three current hunting and fishing rights
cases: Regina v. Jack (now on appeal to the B.C.
Court of Appeal), and Regina v. Kruger and Manuel
and Regina v. Derriksan (both now on appeal to the
Supreme Court of Canada).

Professional affiliations: Member of the bars of British Columbia,
Alberta, Ontario and the Northwest Territories

Publications and talks:

1. The Hutterites, A Case Study in Minority Rights, Canadian Bar Review, 1964.
2. The Sentencing of Homosexual Offenders, Criminal Law Quarterly, 1967.
3. Native Rights in Canada, General Publishers-I.E.A., First Edition, 1970.
4. Dodgers, Deserters and the Law, Canadian Bar Convention, Halifax, 1970.
5. The Prospects for Penal Reform, Canadian Corrections Convention, Ottawa, July, 1971.
6. A Legal Services Program for Indian Communities in Canada, National Conference on Law and Poverty, Ottawa, 1971.
7. Native Land Rights: North America, Australia and New Zealand, Association of Australian and New Zealand Law Teachers, Hobart, Tasmania, August, 1972.
8. The Bill of Rights and Indian Status, University of British Columbia Law Review, August, 1972.
9. Native People in Areas of Internal National Expansion, Conference on Law and Native People, Saskatoon, March, 1973, published by the International Work Group in Indigenous Affairs, Copenhagen, Denmark, November, 1973 and in the Saskatchewan Law Review, 1974.
10. Compensation Schemes for Native Land Claims, Waigani Seminar, University of Papua New Guinea, May, 1973.
11. Cases and Materials on Native Law, First Edition, June, 1973, Second Edition, June, 1974.
12. The Nishga Case, B.C. Studies, Fall, 1973.
13. Benign Discrimination: The Wrong Model for Indian Policy, Symposium on Civil Liberties in the Seventies, Osgoode Hall Law School, Toronto, February, 1974.
14. Canadian Courts and the Concept of Indian Title, Proceedings of the First Congress, Canadian Ethnology Society, Canadian Ethnology Service, Paper No. 17, National Museum of Man, Mercury Series, Ottawa, 1974.
15. Indian Hunting and Fishing Rights, (1974) 38 Saskatchewan Law Review, 45.
16. Case notes on the Cardinal case and the Lavell case, (1974) 38 Saskatchewan Law Review.
17. The Indian Act and the Bill of Rights, (1974) 6 Ottawa Law Review, 397.
18. Native Claims in Canada: Symbolism and Social Reality, Monash University Research Seminar, Aborigines and the Law, Melbourne, Australia, July, 1974.
19. Law and the Proletarianization of Native Peoples in the Americas, Symposium on Indigenism and Colonialism, International Congress of Americanists, Mexico City, September, 1974.
20. Digest of Canadian Indian Case Law (with Paul Taylor), in Abler, Sanders, Weaver, A Canadian Indian Bibliography, University of Toronto Press, 1974.
21. Native Claims in Canada: A Review of Law and Policy, Mid-Winter Meeting, Alberta Bar Association, Edmonton, February, 1975 (this paper is a revision of the paper mentioned in item 18, above).
22. Family Law and Native People, a Report to the Law Reform Commission of Canada, June, 1975.
23. Indigenous Remnant Populations in the Americas, Second Inter-American Conference on the Juridical Aspects of Economic Independence, Panama City, June, 1975.
24. Indian Women, to be published in the McGill Law Review.

